

# Notice of Allowability

Application No.

09/917,763

Examiner

JEAN B. FLEURANTIN

Applicant(s)

HORNICK, MARK

Art Unit

2162

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3 September 2004.
2. ☒ The allowed claim(s) is/are 1,3-12,31,33-42,61,63-72,91 and 93-102.
3. ☒ The drawings filed on 31 July 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
**SHAHID ALAM**  
**PRIMARY EXAMINER**

### **DETAILED ACTION**

1. This is in response to the Applicant's arguments filed 3 September 2004, with respect to claims 1, 3-31, 33-61, 63-91 and 93-120, have been fully considered and are persuasive. Therefore, the rejection of claims *1, 3-12, 31, 33-42, 61, 63-72, 91 and 93-102* has been withdrawn. Claims 13-30, 43-60, 73-90 and 103-120 are canceled as indicated in sections 3 and 4.

2. Claims *1, 3-12, 31, 33-42, 61, 63-72, 91 and 93-102* remain pending for examination.

### ***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims *1, 3-12, 31, 33-42, 61, 63-72, 91 and 93-102*, drawn to a method of data mining comprising the steps of processing the accepted request for data mining processing in the computer system; wherein the determining step comprises the steps of determining if an algorithm required to process the at least one request for data mining processing is supported by the computer system, classified in class 707, subclass 10.

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II. Claims 13-30, 43-60, 73-90 and 103-120, drawn to a method of data mining comprising the steps of querying at least one other computer system to determine whether the at least one other computer system can complete a data mining processing task being performed on the computer system faster than the computer system, classified in class 707, subclass 4.

The inventions are distinct, each from the other because of the following reasons:

Invention listed Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention has separate utility as follow.

Group I. A method of data mining comprising the steps of querying at least one other computer system to determine whether the at least one other computer system can complete a data mining processing task being performed on the computer system faster than the computer system.

Group II. A method of data mining comprising the steps of querying at least one other computer system to determine whether the at least one other computer system can complete a data mining processing task being performed on the computer system faster than the computer system.

See MPEP § 806.05(d).

Because these inventions are distinct for the reasons give above and have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes is proper.

Because these invention are distinct for the reasons given above and the search for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant(s) are reminded that upon the cancellation of claims to a non-elected invention the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors in no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

During a telephone conversation with Mr. Michael A. Schwartz (Reg. No. 40,161) on January 21, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims *1, 3-12, 31, 33-42, 61, 63-72, 91 and 93-102*. Affirmation of this election must be made by the applicant in replying to this Office Action. Claims 13-30, 43-60, 73-90 and 103-120 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Michael A. Schwartz (Reg. No. 40,161) on January 21, 2005.

The application has been amended as follow:

In the claims,

Please cancel claims 13-30, 43-60, 73-90 and 103-120.

### **REASONS FOR ALLOWANCE**

5. With respect to claims 1, 3-12, 31, 33-42, 61, 63-72, 91 and 93-102 are allowed over the prior art of record.

The following is an examiner's statement of reasons for allowance:

With respect to claims 1, 31, 61 and 91, the claimed features "wherein the determining step comprises the steps of determining if an algorithm required to process the at least one request for data mining processing is supported by the computer system; if the algorithm required to process the at least one request for data mining processing is supported, determining whether the computer system is available for

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additional processing; if the computer system is not available for additional processing, determining whether the computer system will become available for additional processing before other computer systems that might process the at least one request; if the computer system is available for additional processing, or if the computer system will become available for additional processing before other computer systems that might process the at least one request, determining whether the computer system will be able to complete requested processing in an allotted time; and if the computer system will be able to complete the requested processing in the allotted time, determining that the computer system can process the at least one request for data mining processing" in conjunction with other elements of the independent claims would not found anticipated or obvious over the prior art made of record.

The dependent claims, being definite, further limiting, and fully enabled by the specification are also allowed.

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6. The closest prior art, Weiss et al., U.S. Patent Number 6,460,037 relates to data storage and retrieval and more particularly to an agent-based networking system for creating a data warehouse and to a method of accessing the same for real time retrieval of application specific data. Thearling U.S. Patent Number 6,240,411 relates to methods and systems for analyzing and selecting records stored in a computer database but fail to teach the above limitations.

7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### CONTACT INFORMATION


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571 – 272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571 – 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jean Bolte Fleurantin

January 21, 2005

  
SHAHID ALAM  
PRIMARY EXAMINER